

Appl. No.: 09/693,481
Amdt. dated April 28, 2006
Reply to Office action of 03/01/2006

REMARKS

This amendment is submitted in reply to the final Office Action dated March 1, 2006. Claims 1, 3 and 6-13 currently stand rejected. Claims 7 and 14-27 have been canceled, without prejudice. Applicants have amended claim 1 to incorporate the subject matter of canceled claim 7. Applicants have also added new claims 28-35 to further define patentable aspects of the invention. No new matter has been added by the amendment. Applicants respectfully submit that the Office Action dated March 1, 2006 was improperly made final. Thus, Applicants respectfully request that the finality of the Office Action be withdrawn and the present amendment be entered.

In light of the amendment and the remarks presented below, Applicants respectfully request reconsideration and allowance of all now-pending claims of the present invention.

Improper Final Rejection

As stated above, Applicants initially submit that the Office Action dated March 1, 2006 was improperly made final. In this regard, the final Office Action set forth new grounds of rejection since Applicants were apparently successful in showing that the Ayres reference did not anticipate the claimed invention. In an effort to cure the deficiency of the Ayres reference, the final Office Action cites an additional reference (the Sherman reference). In the conclusion section, the final Office Action states that "Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action." However, Applicants respectfully disagree with this analysis since Applicants' amendment was only directed to curing a deficiency with respect to indefiniteness regarding use of the term "may be adjusted" by substituting the phrase "is adjustable". Applicants' amendment to independent claim 1 cured such deficiency, but in no way altered the scope of the claim. The previous Office Action asserted that Ayres disclosed that a transfer rate for data packet transmission may be adjusted by a subscriber at any time during the on-going network session based on adjustment of the subscriber-selected bandwidth during the on-going network session. Applicants have shown that, as admitted in the final Office Action, Ayres fails to teach or suggest that the feature based on adjustment of the

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subscriber-selected bandwidth during the on-going network session. This feature was not affected by the amendment. Thus, the amendment to change “may be adjusted” to “is adjustable” was not the reason for new grounds of rejection. Rather, the fact that Ayres failed to teach or suggest the above recited feature necessitated the new grounds of rejection.

Accordingly, the final Office Action was improperly made final under MPEP 707.07(a), which states, *inter alia*, that second or subsequent actions on the merits shall be final, except where the Examiner introduces a new ground of rejection that is not necessitated by Applicants’ amendment. Since the new grounds of rejection were not necessitated by Applicants’ amendment, Applicants respectfully request withdrawal of the finality of the action and entry of the present amendment.

Claim Rejections - 35 USC §103

Claims 1 and 7 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ayres (U.S. Patent No. 6,738,371) in view of Sherman (U.S. Patent No. 5,978,387). Dependent claims 3, 6 and 8-13 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Ayres as modified by Sherman, in view of either one or a combination of Gulliford et al. (U.S. Patent No. 6,618,355, hereinafter “Gulliford”) (claim 3), Salkewicz (U.S. Patent No. 6,609,153) (claim 6), Fowler (U.S. Patent No. 5,793,978) (claims 8-13), and Barton (U.S. Patent No. 6,310,886) (claim 12). Claim 7 has been canceled, without prejudice, and thus the rejection of claim 7 is now moot. However, the deficiencies of the rejection of claim 7 will be discussed below since the subject matter of claim 7 has been incorporated into independent claim 1.

Independent claim 1 has been amended to recite, *inter alia*, retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to a network and separately retrieving a second subscriber-selected bandwidth for information being retrieved from a network, the first and second subscriber-selected bandwidths being separate. In other words, separate bandwidths are selectable for information sent to the network and received from the network. For example, a subscriber may select the bandwidth to be 100 kilobytes per second (kbps) for information received from the network and the bandwidth may be 50 kbps for information sent to the network.

Ayres is directed to a router (20) including a flow manager (54) which is configured to dynamically adjust a rate of data packet flow during a network session. Ayres discloses that the flow manager (54) makes these dynamic adjustments based on current operating conditions of the router (20) (col. 9, lines 6-9 and lines 60-63). For example, the flow manager (54) may make such an adjustment based on off-peak usage criteria such as time of day variances (col. 9, lines 10-13). Meanwhile, adjustments made by the flow manager (54) are also made in an effort to ensure an end user receives at least a quality of service level defined in a quality of service (QOS) profile (col. 9, lines 13-18 and col. 8, lines 33-37). The QOS profiles are maintained by the internet service provider (ISP) (col. 8, lines 33-34).

In the rejection of claim 7, the final Office Action asserted that the above recited feature, which has been incorporated into independent claim 1, was disclosed at col. 8, lines 38-54 with respect to information retrieved from the network and at col. 9, lines 2-9 with respect to information sent to the network. However, the cited passages of Ayres are only directed to information being retrieved from the network and there is no disclosure in the cited passages, in particular, or all of Ayres, in general, which suggests the claimed feature with respect to information sent to the network. Thus, Ayres fails to teach or suggest retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to a network and a second subscriber-selected bandwidth for information being retrieved from a network, the first and second subscriber-selected bandwidths being separate as claimed in independent claim 1.

The secondary references, Sherman, Gulliford, Salkewicz, Fowler and Barton also fail to teach or suggest retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to a network and a second subscriber-selected bandwidth for information being retrieved from a network, the first and second subscriber-selected bandwidths being separate as claimed in independent claim 1 and are not cited as such.

Since the cited references each fail to teach or suggest the recited feature of independent claim 1, any combination of the cited references likewise fails to teach or suggest the recited feature as claimed in independent claim 1. Thus, independent claim 1 is patentable over the cited references. Claims 3, 6 and 8-13 depend either directly or indirectly from independent claim 1,

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and thus include all the recitations of independent claim 1. Therefore, dependent claims 3, 6 and 8-13 are patentable for at least those reasons given above for independent claim 1.

Accordingly, Applicants respectfully submit that the rejections of claims 1, 3, 6 and 8-13 are overcome.

Newly Added Claims

Applicants have added new claims 28-35 to more particularly define aspects of the present application. The new claims include no new matter and are fully supported by the specification and the drawings of the present application.

Accordingly, it is believed that the new claims are in condition for allowance.

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CONCLUSION

In view of the amended claim and the remarks submitted above, it is respectfully submitted that the present claims are in condition for immediate allowance. It is therefore respectfully requested that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicants' undersigned attorney to resolve any remaining issues in order to expedite examination of the present invention.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

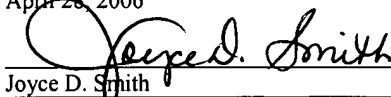


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